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Letter dated 23 June 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 May 2003 (S/2003/532).

The Counter-Terrorism Committee has received the attached supplementary report from the Republic of the Congo, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Letter dated 16 June 2003 from the Permanent Representative of the Congo to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I have the honour to transmit to you the attached supplementary report submitted by the Republic of the Congo concerning the implementation of Security Council resolution 1373 (2001) (see enclosure).

This report provides answers to the questions asked by the Committee.

My Government reaffirms its desire to collaborate with the Counter-Terrorism Committee and remains ready to provide any other information that may be required.

(*Signed*) Basile **Ikouebe**
Permanent Representative

Enclosure

Supplementary report of the Government of the Republic of the Congo pursuant to Security Council resolution 1373 (2001)

Introduction

Pursuant to paragraph 6 of Security Council resolution 1373 (2001), the Republic of the Congo, on 30 August 2002, submitted to the Counter-Terrorism Committee its initial report on measures taken domestically to prevent and combat terrorism.

The present supplementary report was prepared in response to the questions raised by the Counter-Terrorism Committee following its consideration of the initial report of the Government of the Congo. The Republic of the Congo takes as its basis the letter from the Counter-Terrorism Committee dated 2 December 2002, addressed to the Government, in providing supplementary information to assist the Committee to gain an appreciation of the laws and regulations applying to terrorism and its consequences under Congolese law.

This report replies sequentially to the questions as they appear in the letter of the Committee dated 2 December 2002.

I. Paragraph 1 (a) and (b)

I.1 What laws have been enacted and how is the legislation described in the report by the Congo applied?

As indicated on page 4 of the English text of the initial report of the Congo, the country has not yet enacted specific counter-terrorism legislation. To that end, the Congolese Government is making every effort to create the material conditions for preventing and combating terrorism. Thus, in order to meet the requirements of counter-terrorism effectively, texts are currently being prepared for the establishment of a Standing National Counter-Terrorism Commission. The Commission will be the cornerstone of counter-terrorism measures and its principal tasks will be:

- To draw up special counter-terrorism legislation through the preparation of draft laws on terrorism; to introduce into the Congolese legal system the provisions of the international conventions relating to terrorism;
- To propose administrative standards to the Government;
- To follow up terrorism issues at the national and international levels;
- To draft national reports on counter-terrorism measures;
- To establish a juridical database relating to terrorism.

I.2 Can funds collected in Congolese territory by Congolese nationals or residents be diverted for financing acts of terrorism unrelated to the Congo?

Fund-raising and the collection of contributions or gifts of all kinds, irrespective of their intended purpose, is governed by an administrative procedure. Decree No. 2833 of 5 October 1949 regulating fund-raising and the collection of contributions in French Equatorial Africa is in force in the Republic of the Congo.

Article 1 of the decree provides: "fund-raising, the collection of contributions, and appeals to the public for the collection of funds or gifts in kind for whatever purpose are prohibited in French Equatorial Africa, except where authorized by the Governor General, governors, or territorial or regional chiefs, depending on whether the operations envisaged concern the Federation as a whole, a territory or a region".

It is evident that, despite the legal guarantees of fundamental freedoms and rights enshrined in Congolese law, nationals and aliens are obliged to comply with the laws and regulations relating to the organization of the State with respect to fund-raising. Article 3 of the above-mentioned decree provides: "the request for authorization must indicate the purpose of the sums or gifts to be collected as well as the names of the persons organizing the fund-raising or collection of contributions, and the date, duration and territorial limits of the fund-raising or collection of contributions".

However, if there is substantial proof that the purpose of the collection of funds, contributions or gifts organized in the national territory by organizations of nationals or aliens is to finance the commission of acts intended to disturb public order or to promote the commission of actions set forth in Security Council resolution 1373 (2001), such collection of funds is an offence punishable under the criminal law.

In the light of the foregoing, we can assert that fund-raising organized in Congolese territory cannot be diverted to serve the interests of terrorism. Indeed, article 4 of Decree No. 2833 of 5 October 1949 provides that: "The net proceeds of fund-raising, contributions and appeals to the public may not be diverted, on pain of prosecution, from the purpose stated in the application mentioned in article 3. A balance sheet of receipts and expenditures shall be addressed to the competent authority, together with a detailed statement of the use made of the sums collected".

Furthermore, the organization of Congolese citizens or residents who commit offences against the provisions governing fund-raising in the Republic of the Congo is punishable under article 265 of the Penal Code which provides: "Any conspiracy directed against persons or property is a crime against public order".

Similarly, it is important to note that the actions referred to in paragraph 1 (b) of resolution 1373 (2001) do not fall outside Congolese normative provisions relating to crimes and offences. Where funds collected by organizations of nationals or residents have a link with the financing of terrorist acts inside or outside the Congolese State, whether for a religious, charitable or cultural purpose, such operation constitutes a crime against the internal and external security of the State. Article 103 of the Penal Code provides that: "Any person who, having knowledge of plans or acts of treason or espionage, fails to declare them to the military, administrative or judicial authorities at such time as such person comes aware of such activity, shall be subject to the penalties set forth in article 83".

II. Paragraph 1 (c) and (d)

II.1 Application of the rules of the Central African Banking Commission (COBAC) by the Republic of the Congo in the implementation of resolution 1373 (2001)

The COBAC rules are designed to ensure the financial stability of Central Africa. These rules also help to meet the legal challenges imposed by the pursuit of

the purposes set forth in Security Council resolution 1373 (2001). In general, the rules are of undeniable importance in counter-terrorism. As set forth in the initial report on pages 5 and 6 of the English text, they play a role in monitoring the operations of credit institutions at the national and regional levels. The financial institutions and bodies, in accordance with the community regulation in force in all the member States of the Central African Economic and Monetary Community (CEMAC) are required to comply with those regulations. Consequently, a body in the credit sector is prima facie identified by its legal status which confers on it the enjoyment of the rights related to such status and, by the same token, makes it subject to a certain number of obligations.

The Salu Humberto Brada case very explicitly illustrates the firmness of the COBAC rules.

II.2 The Salu Humberto Brada case

Salu Humberto Brada is a limited import-export company incorporated in Congolese territory which also engages in financial operations which, under the law applicable to credit institutions, do not belong to the informal sector although the company claims that such operations are not comparable with those carried out by traditional credit institutions.

From the legal point of view, the Salu Humberto Brada company raises enormous legal and functional problems in the general framework of the credit system in the Republic of the Congo, namely:

- The determination of the legal status of the firm, in compliance with the regulations in force;
- The nature of the property right of the firm;
- The nature of the financial operations carried out;
- The origin of the firm's financial resources; and
- The charging of non-standard interest rates.

After considering the situation of Salu Humberto Brada, the Government of the Republic of the Congo reached the conclusion that the firm, by disguising its legal personality, was not complying with the current regulations governing the management of credit institutions. Consequently, and in order to impose the legislation in force, the competent Congolese authorities froze the firm's bank accounts.

As we can see, the COBAC rules are an important means of preventing and combating terrorism in that they provide the means of preventing the circulation of illicit proceeds, particularly money-laundering, and transfers of atypical funds which might possibly be used to support unacknowledged terrorist causes.

The Committee also seeks information on the Department of Credit and Financial Affairs (DGCRF) of the Ministry of Economy, Finance and the Budget, as well as on the operations carried out by that institution, in particular, the monitoring of atypical financial flows and the existing rules and procedures to enable the intermediaries of credit institutions such as lawyers, and accountants when acting as brokers, to report suspicious financial transactions.

II.3 What are the existing or proposed mechanisms to enable the Department of Credit and Financial Affairs to monitor atypical financial flows; in particular, what laws and procedures are in place in that connection?

The Department of Credit and Financial Affairs is a body responsible for monitoring financial relations between the Congo and foreign countries. Such monitoring covers financial operations involving other countries of banks established in the national territory. In addition to the responsibilities and objectives of the Department that were set out on page 3 of the English text of the initial report of the Government of the Congo, that body includes a monitoring mechanism which enables it to control financial flows between the Congo and foreign countries and thereby to identify atypical transactions.

The monitoring mechanism of the Department of Credit and Financial Affairs comprises two parts:

II.3.1 Prevention

The Prevention aspect comprises monitoring in four stages:

- Monitoring of establishments that have an obligation to make declarations, namely credit institutions (approved intermediaries), currency exchange offices, physical or legal persons engaging in financial operations with foreign countries;
- Quantitative limits: the remittance outside the country of any sum greater than 1 million CFA francs is prohibited;
- Transfers of international credit funds must be made through a credit institution. In other words, any transfer of funds to a foreign country or coming from abroad in an amount greater than 1 million CFA francs must be made by a credit institution or an authorized banking institution;
- Monitoring of the transparency of financial operations. This is effected through the identification of physical or legal persons with a view to controlling economic entities involved in transfers operations. Such monitoring makes it possible to determine the legal personality, the geographical location, the objectives and the nature of the operations effected by those carrying out the transfers.

II.3.2 Detection

Detection comprises three phases:

- Scrutiny of reports of financial operations. Credit institutions are obliged to declare all operations made by them to the Department of Credit and Financial Affairs and to ensure compliance with the requirements in force;
- Preventing the carrying out of operations where the conditions are not in compliance with established standards;
- Prohibiting recourse to the claim of confidentiality of communications.

Similarly, it is to be noted that the machinery set out above enables the Department of Credit and Financial Affairs to detect atypical transfers and to apply

the penalties and fines provided for in the rules of the Central African Economic and Monetary Community (CEMAC).

II.4 How are the intermediaries of financial institutions able to report suspicious financial operations?

The intermediaries of financial institutions such as lawyers, accountants and others acting as brokers are protected by the laws and regulations of the Republic of the Congo. Congolese law guarantees the fundamental rights of the individual, in particular freedom of opinion and expression. Article 12 of the Charter of Rights and Freedoms of 11 July 1991 provides that: "every person shall be entitled to freedom of opinion and expression, which implies the right not to be harassed on account of his or her opinions, and the right, without regard for frontiers, to seek, receive and disseminate information and ideas by any means of expression consistent with the laws and regulations in force".

With regard to the foregoing, we can say that freedom of opinion and expression is a legal mechanism which enables lawyers, accountants and others involved in financial dealings to identify all necessary information concerning irregular transactions.

III. Paragraph 2 (a)

III.1 What laws are in place or proposed to deal with the transborder aspects of terrorist recruitment?

Under the programme for the joint management of shared borders, the Republic of the Congo, Angola and the Democratic Republic of the Congo signed in Luanda the Framework Agreement on cooperation for security of 4 December 1999. The purpose of that agreement is to ensure good-neighbourly relations through the elimination of factors likely to be prejudicial to the territorial integrity and sovereignty of each State party. Consequently, the shared frontiers between these States are a source of collective peace. The recruitment of terrorists at these frontiers is therefore prohibited.

III.2 What legal controls exist governing the acquisition, ownership, carrying, use, import and export of firearms and other weapons?

Unlike certain countries in the world where the legal regime governing weapons is liberalized, the acquisition, ownership, carriage, use, import and export of weapons is strictly prohibited by law in the Congo (see the initial report, page 6 of the English text, fifth paragraph). However, a permit is required for the keeping of hunting rifles (big game, small game and hunting for sport). As can be seen, the problem of weapons is the province of the State and not of individuals.

IV. Paragraph 2 (c)

What provisions exist to exclude from the Republic of the Congo persons, whether asylum-seekers or not, who are persons mentioned in paragraph 2 (c) of the resolution?

The Constitution of the Republic of the Congo of 20 January 2002, article 15, recognizes the right of asylum of foreign nationals, but that right must be exercised

in accordance with the procedures and conditions specified by law. However, despite the recognition of the right of asylum of aliens, it must be acknowledged that aliens are governed in Congolese territory by Act No. 23-96 of 6 June 1996 which establishes conditions for the entry, stay and exit of aliens in the Republic of the Congo.

Article 42 of that Act provides that, "an alien who has failed, without a valid excuse, to request the issuance of a residence card within the statutory time limits shall be subject to a term of imprisonment of between 15 days and one year or to a fine of between 200,000 and 500,000 CFA francs". Similarly, it is to be noted that the right of asylum is also governed by the provisions of the international conventions in force. If a person, whether or not an asylum-seeker, belongs to the category of persons indicated in paragraph 2 (c), such person becomes ipso facto — a danger to public order and is prosecuted in accordance with the laws and regulations in force in Congolese territory.

V. Paragraph 2 (d)

As indicated in the initial report of the Republic of the Congo (pages 12 and 13 of the English text) the Congo is party to a number of international conventions on terrorism, including:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971.

These three international conventions and the supplementary protocol have been ratified by the Republic of the Congo and have been the subject of special national legislation, including the acts listed on page 10 of the initial report of the Republic of the Congo pursuant to resolution 1373 (2001).

With respect to the other international and regional conventions concerning terrorism, it must be noted that, because of the complexity of the legal machinery governing ratification of the international obligations of the State, on the one hand, and enormous economic problems, on the other, those conventions are still in the process of being ratified. With respect to the problems referred to above, those conventions will be the subject of progressive ratification.

As an indication, for the information of the Counter-Terrorism Committee, of the measures taken to apply penalties, as a matter of domestic law, to violations of the international conventions enumerated above, it may be said that the laws adopted in compliance with those conventions are aimed primarily at organizing the monitoring of persons and goods with a view to ensuring the safety of international civil aviation. Consequently, in the event of a violation of international treaty standards, the penalties provided by the laws and regulations in force are applied

pending the preparation of special legislation in the framework of the Standing National Counter-Terrorism Commission.

VI. Paragraph 2 (e)

What is the competence of the courts of the Republic of the Congo to deal with criminal acts committed abroad by a person who is a citizen, and with crimes committed abroad by a foreign national who is ordinarily resident in the Republic of the Congo?

In addition to the provisions of articles 96, 265, 267 and 268 of the Penal Code, crimes committed by Congolese nationals abroad and those committed by foreign nationals ordinarily resident in the Congo are wrongful acts and subject to punishment.

In general, two possibilities can be envisaged:

- Firstly, Congolese courts have jurisdiction to pass judgement on actions committed by nationals or foreigners established in the national territory in accordance with the laws and regulations of the State.

However, a distinction must be made between acts committed abroad by nationals or foreigners residing in the Congo in countries which have agreements of judicial and legal cooperation, and those committed in countries which have no such assistance agreement. Offences and crimes committed by Congolese nationals in countries with which the Congo has judicial and legal relations, such as France, the Democratic Republic of the Congo and Cuba, are dealt with in the framework of letters rogatory. Thus, for example, article 58 of the legal cooperation agreement between the Republic of the Congo and France provides that: "the two States undertake to hand over to each other, in accordance with the rules and under the conditions specified by this agreement, any persons who, being located in the territory of one of those countries, are being prosecuted, or have been convicted, by the judicial authorities of the other country".

- Lastly, in the case of offences committed outside the Congo by a foreigner normally resident in the Congo, it is the principle of the conflict of laws that applies. In other words, if a foreign national residing in the Congo commits an offence in another country, the *lex fori* principle is applied, in other words the governing law is that of the place where the offence was committed. If the accused is in Congolese territory, judicial assistance may be requested from the competent Congolese authorities.

Act No. 24/82 of 7 July 1982 concerning the extradition of foreign nationals provides in article 1: "in the absence of a treaty or convention, the conditions, procedure and effects of extradition shall be determined by the provisions of this Act. This Act shall also apply to matters not regulated by treaties or conventions". We note that crimes and offences committed abroad by foreign nationals resident in the Congo are punishable under the laws of the State.

VII. Paragraph 2 (f)

With respect to judicial cooperation, Congolese legislation can be considered at two levels, domestic and international.

VII.1 Domestic level

At the domestic level, there are texts governing judicial cooperation between the Congolese State and other States. Any person having a legitimate reason may refer to Act No. 001/84 of 20 January 1984 on the reorganization of judicial cooperation and to Decree No. 4330/MJ/CAB of 9 May 1985 which specifies the components of the file in a request for judicial cooperation. These texts guarantee the right to judicial cooperation in the Congo in both civil and criminal cases.

VII.2 Internationally

At this level, judicial cooperation has two aspects, bilateral and multilateral:

- Bilaterally: The Congo has concluded agreements with certain countries with respect to legal and judicial cooperation. This applies to France, the Democratic Republic of the Congo and Cuba. Other agreements of that nature are being negotiated with Angola and the Russian Federation.
- Internationally: This involves the General Convention on Judicial Cooperation, known as the Tananarive Convention, of 12 September 1961 which governs judicial cooperation between the Congo and the other African countries. Similarly, the Congo is a signatory of the Rome Statute of the International Criminal Court but has not yet ratified it. Consequently, its provisions have not yet been incorporated in the domestic legal order. The statute of the International Criminal Court is not binding on the Congo.

VII.3 What is the legal time frame for a request for judicial assistance?

With respect to the legal time frame for a request for judicial assistance, it must be pointed out that judicial assistance requires the filing of an application. Clearly, the outcome of an application for assistance depends on the relevance of the file submitted. In the bilateral context, and for States that have relations of judicial cooperation, the requesting State files an application for judicial assistance through the diplomatic channel to the requested State which takes action thereon. Article 30 of the General Convention on Judicial Cooperation between the Congo and the Democratic Republic of the Congo provides that: "the request for extradition shall be addressed directly to the competent Prosecutor General of the requested State. It shall be accompanied by the original or an authentic copy either of an enforceable sentence, or of an arrest warrant, or of any warrant having the same effects and specifically identifying the judicial authority handing down the sentence, on the one hand, and, on the other, giving the applicable conditions of time, place and a description of the facts. To the extent possible, a description of the individual sought shall also be attached, together with any details to determine his or her identity and nationality".

With respect to the foregoing, it should be recognized that the response to an application for judicial assistance, even in a criminal case, is not mechanical since it depends on fulfilment of the relevant formal and substantive conditions.

VIII. Paragraph 2 (g)

The institutional coordination machinery for the monitoring of drugs, money and security at the frontiers to prevent movements of terrorist groups comprises the following bodies:

- Ministry of the Interior and Police (Frontier Police);
- Ministry of the Economy, Finance and the Budget (Department of Customs);
- Ministry of State, Ministry of Transport and Privatizations, responsible for the coordination of government action (National Civil Aviation Agency), see the initial report of the Congo, pages 9 to 12 of the English text.

In addition, it must be pointed out that this machinery is strengthened by the deployment of mixed patrols as part of the joint management of shared frontiers along the River Congo by the Democratic Republic of the Congo and the Republic of the Congo. Similarly, the measures taken to prevent the counterfeiting and forgery of money, identity papers and travel documents and fraud are as explained in the initial report of the Congo pursuant to Security Council resolution 1373 (2001), on pages 3, 4, 11 and 12 of the English text.

IX. Paragraph 3 (a), (b) and (c)

The institutional mechanism for implementing paragraph 3 (a), (b) and (c) of resolution 1373 (2001) was set out in the initial report of the Congo on page 12 of the English text.

X. Paragraph 3 (c)

What is the legal basis for extradition in the Republic of the Congo?

Extradition in the Republic of the Congo is not a haphazard procedure. It is governed by the existence of judicial cooperation agreements. The judicial cooperation agreements between the Congo, France, the Democratic Republic of the Congo and Cuba, for example, contain clauses covering the reciprocal extradition of persons who have been tried and sentenced in their respective territories. In the case of countries that do not have judicial cooperation agreements, cases are dealt with under the relevant Congolese laws and regulations.

XI. Paragraph 3 (d) and (e)

As indicated in the present report with respect to paragraph 2 (d), the Congolese State is party to certain international conventions but has not yet ratified the majority of them. It must be stated that the 12 conventions relating to terrorism are currently going through the ratification process. Similarly, the drafting of special legislation could be envisaged only following the ratification of all these conventions.

XII. Paragraph 3 (g)

The legal regime governing extradition under Congolese law follows well-defined procedures. In other words, extradition acknowledges a legal basis; consequently refusal of extradition cannot be based on political grounds.

Act No. 25/82 of 7 July 1982 concerning the extradition of foreign nationals provides, in article 1, that: "in the absence of a treaty or convention, the conditions, procedure and effects of extradition shall be determined by the provisions of this Act. This Act shall apply also to matters not regulated by treaties or conventions".

It follows from the foregoing that the extradition of an individual who is assumed to be a terrorist could not be refused on political grounds.

XIII. Paragraph 4

The concerns expressed in paragraph 4 of Security Council resolution 1373 (2001) will be addressed in the context of the Standing National Counter-Terrorism Commission in order to take account of the multidimensional nature of terrorism.

XIV. Other problems

In order to give full effect to Security Council resolution 1373 (2001), the text establishing the Standing National Counter-Terrorism Commission provides for an administrative machinery involving the following institutions:

- Ministry of Foreign Affairs, Cooperation and Francophonie;
- Ministry of Security and Police;
- Ministry of Justice and Human Rights;
- Ministry of the Economy, Finance and the Budget;
- Ministry of State, Ministry of Transport and Privatizations responsible for the coordination of government action;
- Ministry of Territorial Administration and Decentralization.

Lastly, it is to be noted that despite the efforts made by the Republic of the Congo, the Government, because of its enormous problems, needs the assistance of the Counter-Terrorism Committee in order to establish the material and juridical conditions for the prevention and combating of terrorism.